

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

MARLIN DEVON HOLLAND,

Petitioner,

Case Number: 2:07-CV-11004

v.

HONORABLE AVERN COHN

SHERRY BURT,

Respondent.

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**ORDER DENYING CERTIFICATE OF APPEALABILITY**

I.

This is a habeas case under 28 U.S.C. § 2254. Petitioner Marlin Devon Holland (Petitioner) filed a pro se petition for a writ of habeas corpus challenging his conviction for second-degree murder, raising six claims. Respondent argued that Petitioner's claims are not cognizable on habeas review, procedurally defaulted, and/or without merit. The Court denied the petition. See Opinion and Order Denying Petition for Writ of Habeas Corpus, filed February 2, 2009. Petitioner seeks to appeal. See Notice of Appeal signed and dated February 24, 2009.

II.

Before Petitioner can appeal the Court's decision, a certificate of appealability (COA) must issue. See 28 U.S.C. § 2253(c)(1) and Fed. R. App. P. 22(b). A COA may be issued "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). In Slack v. McDaniel, 529 U.S. 473, 120 S. Ct. 1595 (2000), the United States Supreme Court held that where the petition is

dismissed on procedural grounds, petitioner must show “that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different matter or that the issues presented were ‘adequate to deserve encouragement to proceed further.’” 120 S. Ct. at 1603-04 (quoting Barefoot v. Estelle, 463 U.S. 880, 898 n.4 (1983)). Where a petition is rejected on the merits, “the petitioner must demonstrate that reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong.” Id. at 1604.

The Supreme Court has also explained that “[t]his threshold inquiry does not require full consideration of the factual or legal bases adduced in support of the claims.” Miller-El v. Cockrell, 123 S.Ct. 1029, 1039 (2003). “A prisoner seeking a COA must prove ‘something more than the absence of frivolity’ ‘or the existence of mere good faith on his or her part.’” A prisoner need not prove that “some jurists would grant the petition for habeas corpus .... a claim can be debatable even though every jurist of reason might agree, after the COA has been granted and the case has received full consideration, that petitioner will not prevail.” Id. at 1040.

In this Circuit, the Court must make an individualized determination of each claim raised in the petition in considering whether or not to grant a COA. See Murphy v. State of Ohio, 263 F.3d 466 (6<sup>th</sup> Cir. 2001) (per curiam). Moreover, where, as here, a Petitioner files a notice of appeal, the Court must issue an order granting or denying a COA. Castro v. United States, 310 F.3d 900 (6<sup>th</sup> Cir. 2002) (per curiam).

### III.

Four of Petitioner’s six claims raised errors regarding his guilty plea. The Court found that Petitioner’s claims that his plea was involuntary lacked merit, his claim

regarding the trial court's alleged error in failing to follow a Michigan Court Rule was not cognizable and lacked merit, and that Petitioner's counsel was not ineffective. The Court also found that Petitioner's Blakely claim regarding his sentence lacked merit because Blakely does not apply to Michigan's sentencing scheme and Petitioner's sentence did not exceed the statutory maximum. Finally, the Court rejected Petitioner's claim regarding his right to appeal by leave because his delayed application was considered and because there is no federal constitutional right to an appeal.

Having carefully reviewed the record, the Court finds that for all the reasons stated in the February 2, 2009 order, reasonable jurists would not debate whether Petitioner's claims deserve to proceed further or whether the Court erred in denying habeas relief. Accordingly, a COA is DENIED.

SO ORDERED.

S/Avern Cohn  
AVERN COHN  
UNITED STATES DISTRICT JUDGE

Dated: March 2, 2009

I hereby certify that a copy of the foregoing document was mailed to Marlin Holland 177944, Macomb Correctional Facility, 34625 26 Mile Road, New Haven, MI 48048 the attorneys of record on this date, March 2, 2009, by electronic and/or ordinary mail.

S/Julie Owens  
Case Manager, (313) 234-5160